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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,390	02/12/2001	Samuel T. Labrie	PF-0232-1 DIV	8952
27904	7590	03/03/2004	EXAMINER	
INCYTE CORPORATION 3160 PORTER DRIVE PALO ALTO, CA 94304		ART UNIT		PAPER NUMBER

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Communication Re: Appeal</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/782,390	LABRIE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Lorraine Spector, Ph.D.	1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

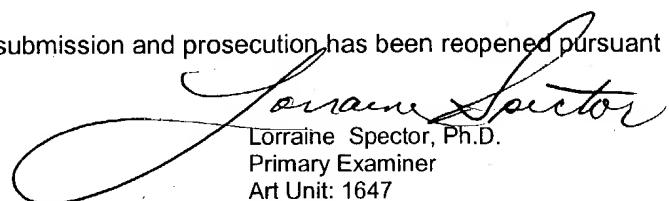
1.  The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
  - (a)  it was not timely filed.
  - (b)  the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
  - (c)  the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d)  the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.
  - (e)  the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
  - (f)  a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2.  The appeal brief filed on 12/1/2003 is NOT acceptable for the reason(s) indicated below: *See attached.*
  - (a)  the brief and/or brief fee is untimely. See 37 CFR 1.192.
  - (b)  the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
  - (c)  the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).**

3.  The appeal in this application is DISMISSED because:
  - (a)  the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (b)  the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (c)  Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d)  other: \_\_\_\_\_

4.  Because of the dismissal of the appeal, this application:
  - (a)  is abandoned because there are no allowed claims.
  - (b)  is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c)  is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

  
 Lorraine Spector, Ph.D.  
 Primary Examiner  
 Art Unit: 1647

Appellants have submitted two new declarations under 37 C.F.R. §1. 132 as part of the same paper as the appeal brief. Section 1207 of the MPEP clearly states that "A new amendment, new affidavit, or other new evidence must be submitted in a paper separate from the appeal brief. Accordingly, the brief is defective.

Appellant is required to comply with provisions of MPEP 1207 and 37 C.F.R. §1. 195.

To avoid dismissal of the appeal, Appellant must comply within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.



Lorraine Spector

LORRAINE SPECTOR  
PRIMARY EXAMINER